IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

SECOND APPEAL NO.949 OF 2005

1 Shri Manohar Tatya Kangutkar & ors. Appellants

vs.

1. Shri Harihar Mahadeo Prasha
& ors. Respondents

Mr.P.S.Dani for the appellants.

Ms.Gauri Godse for respondents 1, 2, 4 and 5.

CORAM : ANOOP V. MOHTA,J.

DATED : 8th August, 2007

P.C.

Both the Courts, after taking into consideration the evidence as well as the documents filed by the parties, have held that the respondents-plaintiffs proved their title and possession over the suit property including the suit house and, therefore, entitled for permanent injunction as prayed for.

2. Both the Courts further held that the appellants-defendants failed to prove the absolute ownership and possession on the basis of High Court decision; that suit is barred by principle of acquiescence and estoppel and/or for non-joinder of parties.

3. The learned counsel appearing for the appellants has

strongly relied on the Indenture dated 4.8.1938 referring to the property description i.e. Survey no.41/2/2/ whereas the respondents-defendants submitted that the property is having survey nos.41/1 and 41/2 based on the mortgage deed dated 2.7.1920 (Ex.73) and the finding is given by both the Courts that the property in question is the same which is the subject matter of the Suit. Both the Courts have also considered the submission about the western and southern boundaries of the properties which, as recorded, identifies property under Exhibit "71" as described in earlier mortgage deed and sale deed and, therefore, concurrently held that the documents Exhibits 71, 72, 73 and 111 and as proved, the respondents-plaintiffs become the owner after the demise of mother and further that all these documents leave title from Mayekar to the defendants-plaintiffs.

4. The Consent Decree as recorded is totally silent on the description of the property. The documents as interpreted by the courts below and arrived at a finding in favour of the plaintiffs cannot be said to be perverse or contrary to record.

5. The continuous possession is also proved apart from the ownership of the property as discussed above. The order of injunction as granted therefore against the

appellants-defendants is within the frame work of law specially when the defendants failed to prove contra-material and their positive case of ownership based on the High Court decision and adverse possession.

6. Resultantly, the Second Appeal is dismissed.

[ANOOP V. MOHTA,J.]